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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

Implementation of the Cable Television
Consumer Protection and Competition
Act of 1992

Cable Home Wiring

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) MM Docket No. 92-260
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REPLY

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, hereby replies to the pleadings filed by Time Warner Entertainment Company, L.P. ("Time Warner"), TKR Cable Company ("TKR"), and National Cable Television Association, Inc. ("NCTA") in opposition to the petitions filed by WCA and others for reconsideration of the *Report and Order* ("R&O") in this proceeding.¹

I. THE CABLE INTERESTS HAVE FAILED TO ADVANCE A SINGLE COGENT ARGUMENT IN OPPOSITION TO WCA'S PETITION.

In its petition, WCA proposed several minor changes to the Commission's new rules governing the disposition of home wiring upon termination of cable service. As WCA established in its petition, such changes are necessary to eliminate opportunities for cable operators to engage in activities designed to frustrate consumers who switch to alternative service providers. WCA urged the Commission to eliminate the incentive for a cable operator to falsely proclaim an intention to remove wiring from the home of a

¹*Implementation of the Cable Television Consumer Protection and Competition Act of 1992 - Cable Home Wiring*, 8 FCC Rcd 1435 (1993)[hereinafter cited as "R&O"].

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terminating subscriber in order to prevent an alternative multichannel video distributor from utilizing that wiring during the period afforded to the cable operator to remove the wiring.² Specifically, WCA recommended that the Commission require cable operators to remove cabling within seven days of the termination request, bar the termination of service during that seven day period, and establish procedures for the filing of complaints against cable companies that evidence a pattern of abuse.³ In addition, WCA urged the Commission to bar any cable operator from adopting home cabling purchase policies that discriminate against consumers who terminate in favor of an alternative service provider.⁴

WCA's recommendations have been strongly supported by many of the participants in this proceeding. The United States Telephone Association ("USTA"), WJB-TV Limited Partnership ("WJB-TV") and the Bell Atlantic telephone companies

²See Petition of Wireless Cable Ass'n Int'l for Partial Reconsideration, MM Docket No. 92-260, 3-6 (filed April 1, 1993)[hereinafter cited as "WCA Petition"]. As WCA explained in its petition, a cable operator could defeat the whole purpose of the new rules by forcing a consumer who wants to receive service from an alternative distributor to either: (i) go without service for up to thirty days until the initial cabling is abandoned; (ii) tolerate the inconvenience and visual blight of having a second cable installed; or (iii) pay for cabling that the cable operator generally abandons. Faced with such a Hobson's choice, some consumers who had elected to change video programming distributors will no doubt remain with their existing service provider -- precisely the result Congress sought to avoid when it enacted Section 16(d) of the Cable Television Consumer

("Bell Atlantic") all endorsed WCA's proposals without reservation.⁵ Not surprisingly, however, the cable interests have urged the Commission to retain the unintended loopholes in the new rules governing cable home wiring. Yet, they fail to advance a single cogent argument why consumers should be deprived of the benefits that will flow from adoption of WCA's proposals.

A. The Cable Interests Have Advanced No Reason For The Commission To Permit Cable Operators To Establish Different Cable Sales Policies For Consumers Who Are Terminating Service In Favor Of An Alternative Provider.

Look, for example, at how the cable interests responded to WCA's recommendation that cable operators be barred from adopting home cable purchase policies that discriminate against consumers who terminate cable service to subscribe to an alternative -- they respond with *non sequiturs*. Time Warner would have the Commission believe that WCA's fear that cable operators will discriminate are "unfounded because a cable operator cannot require any terminating subscriber to purchase his home wiring"⁶ Along similar lines, TKR contends that "[t]he purpose of the regulations is to ensure that the subscriber is able to purchase the home wiring. That he or she might be able to obtain the wiring without purchasing it is an additional,

⁵See Supporting Statement of United States Telephone Ass'n, MM Docket No. 92-260, at 2 (filed May 18, 1993); Response of WJB-TV Limited Partnership, MM Docket No. 92-260, at 2 n.2 (filed April 15, 1993)[hereinafter cited as "WJB-TV Response"]; Response of Bell Atlantic to Petition for Reconsideration, MM Docket No. 92-260, at 2 n.7 (filed May 18, 1993).

⁶Response of Time Warner Entertainment Co., L.P., MM Docket No. 92-260, at 14 (May 18, 1993)[hereinafter cited as "Time Warner Response"].

but not required benefit to the subscriber.”⁷ NCTA argues against WCA’s proposal on the grounds that “the Commission’s rule mandates that all cable operators must give every terminating subscriber the opportunity to purchase the operator’s wiring before it can be removed.”⁸ Each of these responses has one thing in common; it fails to address the fundamental unfairness of permitting cable operators to discriminate against subscribers who terminate cable service in favor of an alternative service provider. TKR, Time Warner and NCTA either miss the point of WCA’s proposed anti-discrimination rule, or (more likely) lack a compelling response.

With passage of Section 3(d) of the 1992 Cable Act, Congress mandated that a cable system have a uniform rate structure throughout its service area. The legislative history of that provision makes it clear that Congress’ goal was to avoid rate manipulation for anticompetitive purposes. In its recent *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92-266, the Commission established the principle that cable operators may not discriminate among consumers based on their access to an alternative service provider.⁹ That policy is a sound one that should be

⁷Opposition of TKR Cable Co. to Petitions for Reconsideration, MM Docket No. 92-260, at 7 (filed May 18, 1993).

⁸Opposition of Nat’l Cable Television Ass’n to Petitions for Reconsideration, MM Docket No. 92-260, at 4 n.2 (filed May 18, 1993)[hereinafter cited as “NCTA Opposition”].

⁹*Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-177, MM Docket No. 92-266, at ¶ 424 (rel. May 3, 1993).

applied to bar any cable operator from establishing separate purchase policies applicable to those who terminate cable service in order to subscribe to another distributor's offering. Understandably, Time Warner, TKR and NCTA want to avoid addressing the anti-consumer consequences of discriminatory home cabling pricing policies -- the Commission cannot.

NCTA further obfuscates WCA's proposal when it contends that the consumer can avoid the distasteful choice of going without service for thirty days or having two wires installed by requiring the alternative service provider to purchase the cabling from the cable operator.¹⁰ First, NCTA's scenario assumes that the alternative service provider can utilize the cabling installed by the prior operator, which is not always the case. In such instances, a delay in the removal of cabling inevitably forces the consumer to suffer either having two cables installed or having to delay installation of the new service.

Second, and more importantly, NCTA ignores the obvious anti-consumer impact of fraudulently inducing anyone (be it the consumer or an alternative distributor) to purchase home wiring that the cable operator intends to abandon. Even where the consumer is reimbursed for the purchase price by the alternative service provider, that cost will have to be passed on in higher fees than would have otherwise been necessary. The key to WCA's proposal is that it does not bar a cable operator from adopting a uniform policy of requiring consumers to purchase home wiring upon termination of

¹⁰See NCTA Opposition, *supra* note 8, at 3.

service. Rather, it only addresses discriminatory conduct and fraudulent representations to consumers designed to hamper competition.

B. There Is No Valid Reason For Permitting Cable Operators Thirty Days To Remove Cable Home Wiring After Termination Of Service.

Time Warner, and only Time Warner, opposes WCA's recommendation that the Commission reduce from thirty days to seven days the length of time afforded a cable operator to remove home cabling that is not purchased by a terminating subscriber. In explaining why the Commission should retain the existing thirty day period, Time Warner merely declares that "[t]his shortened removal period is simply another twist on the argument articulated by NYNEX supporting forced abandonment of the wiring upon installation."¹¹ Yet, Time Warner provides no factual support for the proposition that requiring removal of cabling within seven days after a subscriber terminates service is tantamount to a forced abandonment.

Indeed, for Time Warner to even suggest that it would be confiscatory to require a cable operator to remove cable home wiring within seven days is absurd. NCTA's own voluntary customer standards provide that service interruptions generally

¹¹See Time Warner Response, *supra* note 6, at 13 n. 29. Although NCTA does not directly oppose the reduction in time to seven days, it does contend that "the thirty-day time period ensures that subscribers have ample time to determine whether or not to purchase the wiring." NCTA Opposition, *supra* note 8, at 3. That argument is disingenuous, at best, since the thirty day period for removal of the home cabling does not begin to run until the subscriber decides whether or not to make a purchase. See 47 C.F.R. §76.802. Contrary to NCTA's assertion, only the cable operator will benefit from preserving the thirty day period established in the *R&O*.

must be repaired within one day and that standard new installations must be complete within seven business days.¹² Those standards have been incorporated almost verbatim into the customer service standards adopted in MM Docket No. 92-263. If a cable operator can be expected to install cabling within seven days of request and repair service interruptions within one day, it can remove cabling from the home of a former customer within seven days.¹³ By reducing the time that the cable operator can restrict a consumer from permitting an alternative multichannel provider from utilizing installed wiring, the Commission will limit both the leverage the cable operator has and the opportunities for mischief stemming from that leverage.

II. THE COMMISSION SHOULD ESTABLISH THE DEMARCATION POINT IN MDUs AT THE POINT WHERE THE WIRE IS SOLELY DEDICATED TO SERVING A SINGLE UNIT.

Given the consistent attempts by the cable industry to frustrate the introduction of competitive services in multiple dwelling units ("MDUs"), it comes as no surprise that the cable interests have opposed the well-reasoned request by Liberty Cable Company, Inc. ("Liberty") to extend the demarcation point for home cabling in

¹²See *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992: Consumer Protection and Customer Service*, 7 FCC Rcd 8641, 8644 (1992).

¹³See, e.g., *Commission Report and Order*, 7 FCC Rcd 8641, 8644 (1992).

MDUs to a more logical point than the “twelve inch rule” adopted in the *R&O*.¹⁴ Their arguments, however, cannot withstand scrutiny,

NCTA argues, for example, that “[a]llowing a new service provider to go much beyond twelve inches clearly encroaches on the common wiring that is the property of the cable operator.”¹⁵ The facts, however, suggest otherwise. As WJB-TV established in its filing, “[i]n many MDUs, each individual unit is served by a separate wire that extends from a common point within the building to the unit; the length of the wire depends on the distance between the unit and the common point, but in virtually every instance, it is longer than twelve inches.”¹⁶ In other instances of which WCA is aware, a wire dedicated to a single unit will run to a common point on each floor, where it can be disconnected from the common distribution system. In each of these cases, wiring dedicated to a single unit extends more than twelve inches from the unit, yet can be sold to the unit owner and used for other purposes without encroaching on the common wiring.

Equally without merit is the assertion by Time Warner that Liberty’s proposal would lead to a point of demarcation that is “entirely arbitrary and subjective.”¹⁷

¹⁴Petition of Liberty Cable Co. for Reconsideration and Clarification, MM Docket No. 92-260 (filed April 1, 1993).

¹⁵NCTA Opposition, *supra* note 8, at 5.

¹⁶WJB-TV Response, *supra* note 5, at 4.

¹⁷Time Warner Response, *supra* note 6, at 3.

Establishing the point of demarcation at the point where the dedicated wire can be detached from any common wiring or equipment that serves multiple units is logical and easy to apply. That point is readily identified and directly related to the pro-consumer and pro-competitive policy goals Congress sought to advance in adopting Section 16(d) of the 1992 Cable Act.

In short, the cable interests have totally failed to refute the argument that the demarcation point in MDUs should be the first point at which wiring dedicated to serving a single unit can be disconnected from common wiring or equipment. Allowing consumers the option of acquiring cable home wiring from such a demarcation point will achieve Congress' goals in a manner far superior than if the current "twelve inch rule" is retained.

III. CONCLUSION.


Section 16(d) of the 1992 Cable Act reflects Congress' intent that the Commission "enable consumers to utilize [existing] wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause."¹⁸ Adoption of the modifications to Section 76.801 and 76.802 of the Rules that WCA, Liberty and others advocate in this proceeding will advance that objective in a manner that is fundamentally fair to consumers, alternative service providers and cable operators alike.

¹⁸H.R. No. 102-628, 102d Cong., 2d Sess. House Report at 118.

WHEREFORE, for the reasons set forth above and in WCA's petition, WCA urges the Commission to amend Sections 76.801 and 76.802 of the Rules to reflect the suggestions advanced by WCA in this proceeding.

Respectfully submitted,

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